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November 1, 2007

BY FEDERAL EXPRESS PRIORITY OVERNIGHT AND EMAIL
Susan M. Hudson, Clerk
Vermont Public Service Board
112 State Street (Chittenden Bank Building)
Drawer 20
Montpelier, VT 05620-7701

Re: Docket No. 7270
Joint Petition of Verizon New England, Inc. d/b/a Verizon Vermont, Certain Affiliates Thereof, and FairPoint Communications, Inc. for Approval of an Asset Transfer, Acquisition of Control by Merger and Associated Transactions

Dear Ms. Hudson:

Enclosed please find for filing in the above matter an original and six (6) copies of the Reply Brief on behalf of the New England Cable and Telecommunications Association, Inc. ("NECTA") and Comcast Phone of Vermont, LLC ("Comcast Phone").

Copies of this filing are also being delivered by Federal Express to the Department of Public Service and to counsel for the petitioners,and electronic copies are being emailed to the Board and to parties on the service list.

Please date stamp the enclosed duplicate copy of this transmittal letter for my files. Thank you very much for your assistance. Should the Board have any questions concerning this filing, do not hesitate to contact me.

Sincerely yours,

Alan D. Mandl, *pro hac vice*

Enclosure

cc: Judy Whitney (w/out copies)
June E. Tierney, Esq.
Peter H. Zamore, Esq.
Nancy S. Malmquist, Esq.
Service List

STATE OF VERMONT
PUBLIC SERVICE BOARD

Joint Petition of Verizon New England, Inc., d/b/a Verizon Vermont, Certain Affiliates Thereof, and FairPoint Communications, Inc., for approval of an asset transfer, acquisition of control by merger and associated transactions	)))))	Docket No. 7270

REPLY BRIEF OF THE NEW ENGLAND CABLE AND TELECOMMUNICATIONS ASSOCIATION, INC., AND COMCAST PHONE OF VERMONT, LLC

By their attorney,

Alan D. Mandl, *pro hac vice*
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Dated: November 2, 2007

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I. INTRODUCTION

The New England Cable and Telecommunications Association, Inc. ("NECTA") and Comcast Phone of Vermont, LLC ("CPVT") submit this Reply Brief in order to address issues raised by FairPoint, Verizon and other parties in their Direct Briefs. By limiting their argument in their Reply Brief, NECTA and CPVT do not waive any arguments or positions taken in their Direct Brief and assert that many issues have been adequately addressed therein and do not warrant further argument.[1]

NECTA and CPVT reiterate that they do not oppose the proposed merger transaction as long as any order approving the proposed merger contains its recommended merger approval conditions needed to cure or mitigate the obstruction or impairment of competition and promote the public good.

II. REPLY ARGUMENTS

A. FAIRPOINT'S CHANGED POSITION ON BRIEF

The number of issues in dispute has been narrowed by FairPoint's willingness in its Direct Brief to accept the following merger conditions which have been advanced by NECTA/CPVT during this proceeding, in the event that the Board approves the proposed transactions in this matter, subject to conditions for approval:

1. FairPoint has agreed to accept a Board merger condition that it shall not seek or take steps to classify the inherited Verizon local exchange

[1] For example, at no point in testimony, hearings or on brief has FairPoint contested that existing pole attachment rates should remain unchanged for the duration of the incentive rate plan (NECTA/CPVT Br. at 69-71).

operations as a rural telephone company for purposes of 47 U.S.C. §251(f)(1) (FairPoint Br. At 100).[2]

2. FairPoint has agreed to accept a Board merger condition that it shall not seek suspensions or modifications of 47 U.S.C. §251 ILEC obligations pursuant to 47 U.S.C. §251(f)(2) (FairPoint Br. At 100).[3]

3. FairPoint has agreed to accept a Board merger condition that it shall extend the terms of existing interconnection agreements that have not expired for a period of three years from the date of merger closing (FairPoint Br. at 100).[4]

4. FairPoint has agreed to accept a Board merger condition that it shall extend the terms of existing interconnection agreements that have expired and remain in effect on a month to month basis in accordance with their terms for a period of three years from the date of merger closing (FairPoint Br. at 100).[5]

5. FairPoint has agreed to a Board merger condition that FairPoint freeze wholesale tariffed and SGAT rates for three years from date of merger closing (FairPoint Br. at 90, 115).[6]

6. FairPoint has agreed to a Board merger condition that it shall not seek recovery through retail, wholesale or pole attachment rates of (a) expenses incurred under the Transition Services Agreement; (b) expensed Capgemini costs; and (c) any acquisition premium or other difference between the purchase price and net book value of the acquired Verizon operations (FairPoint Br. at 83, 84, 89).[7]

FairPoint has expressed its willingness to accept the above commitments as merger conditions if the Board imposes specific conditions upon the approval of the proposed merger transaction (FairPoint Br. at 88-89).

The Board should adopt these FairPoint commitments proffered in its brief as merger conditions in order to assure that they are enforceable and not mere promises that

[2] NECTA/CPVT Br. at 10, 16-18.
[3] NECTA/CPVT Br. at 10, 18-22.
[4] NECTA/CPVT Br. at 10, 23-32.
[5] Id..
[6] NECTA/CPVT Br. at 12, 23-32.
[7] NECTA/CPVT Br. at 12, 75, 76.

could be renounced at any time by FairPoint's officers or directors. Ample evidence in the hearing record supports the adoption of the above merger conditions by the Board.[8] FairPoint's willingness to accept these merger conditions provides the Board with further reason to adopt these commitments as objective and enforceable merger conditions, consistent with past Board practices regarding the imposition of merger conditions.[9]

B. ADDITIONAL FAIRPOINT COMMITMENTS TO WHOLESALE CUSTOMERS SHOULD BE MADE MERGER CONDITIONS

The Board must impose additional merger conditions to ensure that FairPoint does not obstruct or impair competition by degrading existing levels of service provided by Verizon. Several of these conditions have been accepted by FairPoint if the Board imposes conditions on any order approving the proposed merger transaction (FairPoint Br. at 88-94). The following FairPoint commitments should be imposed as merger conditions by the Board:

1. FairPoint's commitment to implement systems that conform to industry standards;

2. FairPoint's commitment not to seek recovery from retail and wholesale customers (and attaching entities) expensed portions of Capgemini costs, acquisition premiums and TSA expenses;

3. FairPoint's commitment to enable wholesale customers to test their ability to interface with FairPoint's interfaces and also to establish that their orders will flow through FairPoint's new back office systems at acceptable levels prior to cutover;

4. FairPoint's commitment to continue to offer CLECs and wholesale customers services that Verizon provides immediately prior to closing, including access to E911 systems, back office support systems, directory

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[8] NECTA/CPVT Br. at 10, 12, 23-32, 75, 76.
[9] NECTA/CPVT Br. at 15.

listings, automated directory assistance, published network specification sheets, CLEC User Forums, a CLEC handbook and a website comparable to that now provided by Verizon for wholesale customers and attaching entities;

5. FairPoint's commitments regarding continuation of interstate and intrastate special access services and freezing of these rates for three years after the date of merger closing;

6. FairPoint's commitment to provide a License Services Administration Group (LSAG) that is functionally equivalent to the LSAG that Verizon provides today to handle pole and conduit attachment licensing applications, processing of make ready requests and the handling of related issues, such as billing;

7. FairPoint's commitment to provide both web-based and e-bonding electronic interfaces to wholesale customers that want to use these tools rather than manual or telephonic interfaces with FairPoint;

8. FairPoint's commitment to comply with industry guidelines – including Verizon's current porting and trunking intervals and practices.

Ample evidence supports Board adoption of these FairPoint commitments as merger conditions. Even where FairPoint has stated its intent or objective to provide the same level of service that Verizon currently provides, these promises are merely "forward-looking" statements that are not binding on FairPoint. These commitments should be covered by merger approval conditions in order to assure that they are enforceable and that FairPoint will not backslide from these commitments.

C. OTHER MERGER CONDITIONS NEEDED TO AVOID THE OBSTRUCTION OR IMPAIRMENT OF COMPETITION AND TO PROMOTE THE PUBLIC GOOD REGARDING COMPETITION

In other instances, however, FairPoint's vague intentions and outright refusals to mitigate harms arising out of its proposed transaction would obstruct or impair competition and must be prohibited or cured by the Board's imposition of additional conditions on any merger approval. These issues have been addressed fully in NECTA/CPVT's Initial Brief and are summarized below.[10] The Board should impose the following requirements as conditions to any merger approval:

1. A requirement that FairPoint follow, at the very least, existing Verizon practices regarding number porting intervals. These include 24 Firm Order Confirmation (FOC), weekend number porting practices, 3 business day intervals for standard number porting and comparable intervals for the porting of numbers for customers who also subscribe to the ILEC's DSL service.[11] Any changes or backsliding on these current practices would have an immediate and negative impact on competition in VT.

2. A requirement that FairPoint follow, at the very least, existing Verizon practices regarding trunk ordering intervals.[12]

3. A requirement that Verizon continue to provide tandem transit services at current Verizon rates and under current Verizon interconnection agreements for at least 3 years from the date of merger closing.[13]

4. A requirement to reimburse wholesale customers for their documented costs incurred in order to adapt their existing systems and internal practices to FairPoint's new systems (e.g., training expenses, costs incurred to establish e-bonding arrangements with FairPoint's new systems, work and other costs involved as a result of the change from Verizon to FairPoint point codes).[14]

5. A requirement to reimburse wholesale customers for additional costs that wholesale customers are forced to incur as a result of the loss of electronic ordering processes during the so-called "dark period" or transition period when only manual orders may be placed, and the additional manual costs that would be incurred if, after cutover, the FairPoint systems do not work as planned and orders must continue to be submitted and processed manually for a protracted time frame.[15]

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[10] NECTA/CPVT Br. at 10-13 provides a detailed list of proposed merger conditions. Individual sections of NECTA/CPVT's Initial Brief further elaborate upon this summary of conditions and add specific requests for merger approval conditions relating to the summary provided at pages 10-13 of their Initial Brief.

[11] NECTA/CPVT Br. at 57, 58.

[12] NECTA/CPVT Br. at 58.

[13] NECTA/CPVT Br. at 59, 60.

[14] NECTA/CPVT Br. at 66-69.

[15] Id.

6. A requirement to establish a fund to secure wholesale customers against direct damages in the event of a major cutover failure.[16]

7. A requirement to separate wholesale and retail operations so that wholesale customers are not forced to negotiate interconnection agreements with FairPoint employees who also handle retail business accounts.[17]

8. Requirements that FairPoint measure and report on its provision of parity to wholesale customers post closing, during the estimated 5-day "transition period" and after closing.[18]

9. Requirements that FairPoint maintain information sufficient to enable the Board to determine that FairPoint is providing non-discriminatory access to poles, conduits and rights of way.[19]

10. A requirement that FairPoint utilize reasonable cost allocations as part of any future attempt by FairPoint to recover the capitalized Capgemini costs, if the Board allows FairPoint to seek the inclusion of these costs in future rates.

NECTA and CPVT respect the interests of other stakeholders in this proceeding, who have recommended additional merger conditions in order to better ensure that the proposed transactions would promote the public good and avoid the obstruction and impairment of competition. NECTA and CPVT do not oppose the Board's adoption of other merger conditions that are in addition to and not inconsistent with the merger approval conditions recommended by NECTA and CPVT.

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[16] Id.
[17] NECTA/CPVT Br. at 64-66.
[18] NECTA/CPVT Br. at 63.
[19] NECTA/CPVT Br. at 63, 71-73.

D. CUTOVER READINESSINESS MERGER CONDITIONS

1. The Need for a Third Party Consultant

NECTA and CPVT concur with the Department of Public Service that FairPoint has failed to commit to necessary safeguards relating to its unprecedented plan to replace totally Verizon back office systems and operations on a three state basis. Both DPS witness Mills and Dr. Pelcovits cautioned that the bar not be set too low regarding system readiness criteria.[20] An independent third party must scrutinize and have input into the system testing and testing approval criteria to be used by FairPoint to establish the readiness of its systems for cutover.[21] The independent third party should have adequate time for its work and should not be forced to inherit or acquiesce in the current status of FairPoint's testing process as of the time when the independent third party begins its work. Additionally, wholesale customers must have an adequate opportunity to comment directly to the independent third party on FairPoint's testing and approval criteria and must have the ability to directly contact the independent third party in order to communicate wholesale customer concerns and information as the process progresses.

[20] NECTA/CPVT Br. at 44; DPS Br. at 41-44.

[21] As indicated in testimony and on brief, NECTA/CPVT prefer that an independent party design and conduct the system testing, as was done in the case of Section 271 proceedings relating only to wholesale OSS (NECTA/CPVT Br. at 45-50).

2. Cutover Readiness Criteria Must Go Beyond What FairPoint Proposes

a. Additional Criteria Suggested by DPS are Reasonable

NECTA and CPVT concur with DPS witness Mills' recommendation that any cutover readiness evaluation should take into account business simulation and conversion testing.[22] We also concur with DPS's recommendation that cutover readiness evaluation include assurance that FairPoint's new systems are developed and implemented to comply with the competitive market opening requirements of the Telecommunications Act.[23] NECTA and CPVT also support DPS's recommendation that FairPoint be directed to form a "ready response" team to provide a mechanism for dealing with interconnection disputes quickly and without resorting to "full blown" litigation.[24] Wholesale customers must have an avenue to quickly resolve issues in the event of problems or disputes during or after cutover. These cutover readiness criteria go beyond what FairPoint has proposed and should be included in a merger approval condition if the Board decides to approve the proposed merger transaction.

b. Cutover-Related Merger Conditions Must Include Safeguards That Ensure FairPoint's Operational Readiness to Serve Wholesale and Retail Customers

Because FairPoint is not taking over a fully functioning business as a result of this transaction and has not previously had wholesale experience or a staff to serve wholesale customers needed to perform the obligations of a non-rural ILEC across a three

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[22] NECTA/CPVT Br. at 45, citing Tr. 9/19/07 at 189-191.
[23] DPS Br. at 41-43.
[24] DPS Br. at 84.

state footprint[25], FairPoint's readiness to give Verizon the irrevocable Notice of Readiness for Cutover also depends upon a host of operational readiness criteria. Operational readiness issues go beyond the technical systems and address the staffing, training and processes that support technical readiness. FairPoint must have adequate staffing to run the systems, contingency plans in the event there is a material failure once the systems cutover has occurred and escalation processes in the event of problems during the "transition period" or post-cutover.

FairPoint acknowledges the need for operational readiness, but has refused to provide for an operational readiness assessment by an independent third party. FairPoint also has not committed to any other form of merger condition that would provide the Board with a reasonable assurance of FairPoint's operational readiness prior to cutover. FairPoint has offered no means by which the Board, a third party consultant or other stakeholders would receive assurance and verify FairPoint's cutover readiness in these operational respects. "Trust-but don't verify" is a not a reasonable approach for the Board to take, given the critical importance of FairPoint's operational readiness to run Verizon's ILEC business for retail and wholesale customers and for the public good in Vermont. Moreover, it is critical that the State, through the Department of Public Service or the Board, have the express authority to curtail FairPoint's right to give Verizon the irrevocable Notice of Readiness for Cutover if, after review of FairPoint's system and operational readiness, substantial concerns persist.

Under these circumstances, the Board should adopt a merger condition for the appointment of a third party monitor as suggested by DPS; provided, however, that the independent third party monitor should be given an expanded role that includes the

[25] NECTA/CPVT Br. at 37.

evaluation of FairPoint's operational readiness for cutover. These operational readiness criteria are discussed in NECTA and CPVT's Initial Brief.[26]

NECTA and CPVT have properly recognized, and DPS and FairPoint have acknowledged, to some degree, that interconnecting carriers need: (1) advance notice of the new systems being created by FairPoint; (2) a reasonable opportunity to modify their own systems in order to make them interoperable with FairPoint's new systems[27]; (3) an opportunity to test the interoperability of their own systems with those of FairPoint, including the acceptance or orders and the flow through of orders at commercial volumes; (4) proof of FairPoint's ability to conduct number porting on a basis equivalent to Verizon's existing practices; (5) proof of FairPoint's ability to provision trunk orders at Verizon's intervals; (6) proof that FairPoint has staffed and trained its own employees to provide wholesale services in an efficient and complete manner; (7) proof that FairPoint has staffed and trained an employee group (similar to Verizon's License Services Administration Group) to handle pole and conduit attachment license applications and related work; (8) the provision of training by FairPoint regarding the inter-operability of interconnecting carrier systems with FairPoint's; (9) proof that FairPoint has adopted and has the ability to execute contingency plans in the event of system failures prior to, during and after the cutover date; (10) proof that FairPoint has adopted and has the ability to execute escalation procedures prior to, during and after the cutover date; (11) proof that FairPoint has developed the means to track and demonstrate

[26] NECTA/CPVT Br. at 52-55. These operational readiness criteria are in addition to the ability of the independent third party monitor to review and have input into FairPoint's OSS testing plans, acceptance criteria and test results and the ability of wholesale customers to have an opportunity for adequate and timely input on these issues directly to the independent third party monitor.

[27] This is especially true for interconnecting parties that use e-bonding, a more involved electronic interface than the Web-GUI interface that FairPoint's WISOR system demonstration covered. FairPoint has acknowledged the need for inter-carrier cooperation and a greater carrier work effort associated with the establishment of e-bonding interfaces with FairPoint.

to the Board the provision of parity to wholesale customers and attaching entities; and (12) meet any other operational readiness criteria deemed important by the Board.

c. FairPoint's Operational Readiness for Cutover is Critical to Retail and Wholesale Customers

The importance of FairPoint's satisfying operational readiness criteria for cutover cannot be overstated. In its S-4 filing with the SEC, FairPoint includes its operational readiness to serve wholesale and retail customers among the material risk factors associated with its ability to carry out its plan to replace Verizon.[28] In order to promote the public good and avoid the obstruction and impairment of competition, the Board must adopt merger conditions that provide safeguards that FairPoint has met operational readiness criteria before cutover.

d. FairPoint's Proposal for a Single Consultant for Maine, New Hampshire and Vermont is Inadequate and No Such Proposal Has Been Filed With the Board or Presented for Questioning as Part of this Proceeding

As explained above, both DPS as well as NECTA/ CPVT conclude that, although it is a step in the right direction, FairPoint's third party monitor proposal (the so-called "New Hampshire Proposal") is inadequate. At the close of hearings in September, no process for the involvement of a third party consultant to be used by the three New England States to assess FairPoint's cutover readiness had been adopted by the public staffs involved in the Maine, New Hampshire and Vermont merger approval investigations. The dates set forth in the "New Hampshire Proposal" are stale and may

[28] NECTA/CPVT Br. at 35—41, 46, 47.

not have been realistic in the first instance. No such three state staff proposal has been submitted to the Board for its review and consideration in making findings and rulings critical to the safeguarding of the public and avoiding obstruction and impairment of competition.[29]

Under these circumstances, the Board must rely upon the existing record and must impose cutover-related merger conditions requested by DPS, NECTA and CPVT. These conditions are needed as safeguards against a premature or unsuccessful cutover, such as occurred in Hawaii following a sale of assets by Verizon to Hawaiian Telcom.[30]

Finally, approval of any changeover from Verizon to FairPoint as a provider of retail and wholesale services should be accompanied by a Board finding and ruling that FairPoint, from and after the date of merger closing, shall be subject to Board and Department of Public Service oversight in its conduct of ILEC interconnection and other wholesale operations within Verizon Vermont's ILEC footprint.

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[29] On October 29, 2007, during hearings in Docket No. DT 07-011, the New Hampshire Public Utilities Commission Staff provided parties to the New Hampshire proceeding with a Tri-State Statement of Scope on FairPoint Cutover Monitoring agreed to by the staffs of the New Hampshire and Maine Commissions and the Vermont DPS as well as consented to by FairPoint. Consultants to NH PUC Staff as well as Mr. Nixon were questioned regarding this proposal on October 30, 2007. On October 31, 2007, NECTA/CPNH witness Dr. Pelcovits was allowed to supplement his pre-filed testimony and offer comments on the proposal.

[30] The cutover readiness issue is of enormous importance to a voice service provider that serves residential customers, as CPVT has begun to do in Vermont. Service affecting risks, costs and problems that arise out of the cutover - made necessary solely by FairPoint's proposed transaction - are of grave concern to CPVT. Should the Tri-State Statement of Scope be considered by the Board in this proceeding, NECTA and CPVT request that they and other stakeholders should be afforded an opportunity to address the three-state staff proposal and file a supplemental Reply Brief explaining how the proposal is consistent with or differs from previously-expressed positions.

III. CONCLUSION

For the reasons above and for the reasons stated in the Initial Brief of NECTA and CPVT, the Board should not approve the proposed transactions unless it adopts the merger conditions recommended herein and in NECTA and CPVT's Initial Brief. These merger conditions are the minimal measures needed to avoid or mitigate the obstruction and impairment of competition arising out of the proposed transactions. Without such merger conditions, the proposed transaction would not promote the public good.

Respectfully submitted,

NEW ENGLAND CABLE AND
TELECOMMUNICATIONS ASSOCIATION, INC. AND
COMCAST PHONE OF VERMONT, LLC

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